

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF UTAH, by and through)	
its Governor, SPENCER J. COX,)	
and its Attorney General,)	
SEAN D. REYES,)	
)	
Petitioner,)	
)	
v.)	Case No. 23-1157
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY and MICHAEL S. REGAN,)	
Administrator, U.S. EPA,)	
)	
Respondents.)	

**STATE OF UTAH'S NON-BINDING
STATEMENT OF ISSUES TO BE RAISED**

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Utah is challenging the U.S. Environmental Protection Agency's ("EPA") final decision to impose a Federal Implementation Plan ("FIP") on Utah ostensibly to comply with the Clean Air Act's ("CAA") "Interstate Transport Provision," 42 U.S.C. § 7410(a)(2)(D)(i), which is aimed at preventing emissions from within the state from significantly contributing to the nonattainment or interfering with the maintenance of National Ambient Air Quality Standards for ozone in other downwind states. EPA's decision is titled "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality," and is published in the Federal Register at 88 Fed. Reg. 36,654 (June 5, 2023) (EPA Docket No. EPA-HQ-OAR-2021-0668) ("Final Rule").

Utah previously prepared and submitted an approvable State Implementation Plan or "SIP" to EPA that complied with the CAA and the Interstate Transport Provision. *See* 42 U.S.C. § 7410(k)(3) (EPA "shall approve" a proposed SIP if it "meets all the applicable requirements of [the CAA]."). Nonetheless, EPA disapproved Utah's SIP,¹

¹ "Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards," published in the Federal Register at 88 Fed. Reg. 9,336 (February 13, 2023).

a separate action that Utah is currently challenging in the Tenth Circuit Court of Appeals, Case No. 23-9509. Without the SIP disapproval, EPA has no legal authority under the CAA to impose a FIP. 42 U.S.C. § 7410(c)(1).

In this action, Utah challenges the portion of EPA's Final Rule that imposes a FIP for Utah as arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Accordingly, the issues to be raised in this appeal may include, but are not limited to:

1. Whether EPA's decision to impose a FIP on Utah was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law where EPA decided to impose a FIP after relying on a policy-based four-step framework to assess interstate transport in the West—a decision that (a) EPA failed to adequately explain, and (b) cannot be reconciled with EPA's longstanding position that the four-step framework for determining significant contribution in the East does not properly account for conditions in the West.
2. Whether EPA arbitrarily treated Utah differently than other Western states when assessing interstate contribution.

3. Whether EPA otherwise acted arbitrarily and capriciously or abused its discretion in deciding to impose a FIP for Utah.
4. Whether EPA's imposition of a FIP intrudes on state sovereignty and is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

Dated: July 21, 2023.

Respectfully submitted,

/s/ Melissa A Holyoak

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c), that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the Court's CM/ECF system.

Dated: July 21, 2023

/s/ Melissa A. Holyoak

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